

Message Text

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ACTION DLOS-05

INFO OCT-01 EUR-12 IO-10 ISO-00 AID-05 CEQ-01 CIAE-00

COA-01 COME-00 DODE-00 EB-07 EPA-01 INR-07 L-02

NSF-01 NSC-05 NSAE-00 PM-03 OES-03 SS-15 SP-02

FEAE-00 OIC-02 AF-06 ARA-06 EA-06 NEA-09 CG-00 DOTE-00

FMC-01 FAA-00 PA-01 PRS-01 USIA-06 /119 W

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R 271749Z FEB 75

FM AMEMBASSY LONDON

TO SECSTATE WASHDC 8723

INFO USMISSION USUN NEW YORK

C O N F I D E N T I A L SECTION 01 OF 02 LONDON 03028

E.O. 11652: GDS

TAGS: PLOS

SUBJ: LOS: GROUP OF 17 MEETING ON POLLUTION

1. SUMMARY: GROUP OF 17 MARITIME STATES MET IN LONDON FEB. 24-26 AND COMPLETED DRAFTING ARTICLES ON LOS ENVIRONMENTAL ISSUES WITH EMPHASIS ON VESSEL SOURCE POLLUTION. GROUP DISCUSSED TEXT WHICH WILL BE REDRAFTED BY UK AND CIRCULATED TO MEMBERS BEFORE GENEVA SESSION OF LOS CONFERENCE. GROUP WILL MEET AGAIN EARLY IN GENEVA TO DISCUSS POSSIBLE CO-SPONSORSHIP. END SUMMARY.

2. USDEL HEADED BY LEITZELL, STATE AND INCLUDING FRENCH, DOD; MORRIS, JCS; MCMANUS, EPA; COOK, CEQ; AND YOUNG, DOT ATTENDED GROUP OF 17 MEETING FEB. 24-26. EXCEPT FOR MINOR DRAFTING REFINEMENTS TO BE MADE BY UK, GROUP COMPLETED WORK ON PROPOSED QUOTE OPENING POSITION UNQUOTE TO BE TABLED IN GENEVA AND ALSO CONSIDERED TACTICAL ISSUES AND POTENTIAL FALLBACKS. NO FINAL DECISION ON CO-SPONSORSHIP WAS MADE, BUT IT APPEARS LIKELY THAT AT LEAST HALF OF GROUP WILLING TO SPONSOR OPENING POSITION, WHICH CONTAINS
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ONLY LIMITED PORT STATE ENFORCEMENT RIGHTS AND NO COASTAL

STATE ENFORCEMENT JURISDICTION, EVEN IN TERRITORIAL SEA.

3. INTERNATIONAL AND NATIONAL REGULATIONS: GROUP GENERALLY ACCEPTED ARTICLE WHICH URGED CREATION OF INTERNATIONAL STANDARDS AND CREATED OBLIGATION ON FLAG STATES TO ENSURE COMPLIANCE WITH THEM.

4. FLAG STATE ENFORCEMENT: THE PROPOSED UK POSITION REQUIRING EFFECTIVE FLAG STATE ACTION WAS ACCEPTED.

5. PORT STATE INSPECTION: US OBJECTED TO THE CONDITION THAT THE PORT STATE TAKING ACTION BE A PARTY TO THE CONVENTION WHOSE REGULATIONS GAVE RISE TO THE INSPECTION, BUT THE CONSENSUS WAS STRONGLY IN FAVOR OF RETENTION OF THIS CONDITION, PARTLY ON THE GROUNDS THAT IT WOULD STIMULATE RATIFICATION OF THE 1973 CONVENTION.

6. PORT STATE ENFORCEMENT: MOST OF THE DISCUSSION OF THE UK PROPOSED ARTICLE ON PORT STATE ENFORCEMENT OF INTERNATIONAL STANDARDS RELATED TO THE DESIRABILITY OF INCLUDING SOME OR ALL OF THE FOLLOWING SAFEGUARDS FOR THE FLAG STATE:

(A) THE ENFORCING STATE MUST BE A PARTY TO THE CONVENTION ESTABLISHING THE REGULATIONS;

(B) VIOLATIONS WOULD HAVE TO OCCUR WITHIN SOME SPECIFIED MILEAGE OF THE COAST OF THE ENFORCING STATE;

(C) VIOLATIONS WOULD HAVE TO CAUSE OR BE LIKELY TO CAUSE DAMAGE TO THE PORT STATE;

(D) THE FLAG STATE COULD, BY INSTITUTING ENFORCEMENT PROCEEDINGS ITSELF, PREEMPT THE PORT STATE PROCEEDINGS.

THE US ARGUED AGAINST ALL FOUR RESTRICTIONS, ON THE GROUNDS THAT CONSERVATIVE ARTICLES FAVORING FLAG STATES WOULD UNDERCUT THE STRATEGY OF USING PORT STATE AUTHORITY AS A SERIOUS ALTERNATIVE TO A ZONAL APPROACH. THE US WAS VIRTUALLY ISOLATED IN THIS REGARD, SINCE ALL OTHER DELEGATIONS FAVORED RETENTION OF AT LEAST SOME RESTRICTIONS. THE UK (STEELE) STATED IT WOULD BE NECESSARY QUOTE TO HAVE SOMETHING TO THROW OFF THE SLEDGE TO THE WOLVES UNQUOTE. THERE APPEARED TO BE A CONSENSUS THAT FLAG STATE PREEMPTION WAS THE LEAST USEFUL SAFEGUARD TO

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THE MARITIME STATES, AND SHOULD PROBABLY BE THE FIRST SAFEGUARD TO BE JETTISONED IN GENEVA.

7. COASTAL STATE INFORMATION GATHERING: THE GROUP AGREED THAT THE UK PROPOSAL WAS ACCEPTABLE AND DECIDED AGAINST ACCORDING COASTAL STATES ANY RIGHT TO STOP AND BOARD VESSELS REFUSING TO RESPOND TO A LEGITIMATE RADIO REQUEST IT WAS AGREED THAT A FURTHER ARTICLE WOULD BE DRAFTED TO

REQUIRE FLAG STATES TO ENSURE COMPLIANCE BY THEIR SHIPS
WITH ANY SUCH REQUEST.

8. GENERAL PROVISIONS AND SAFEGUARDS: A FRENCH PROPOSAL
TO ADD LANGUAGE RESTRICTING THE ENTIRE PROPOSAL TO DIS-
CHARGE STANDARDS WAS REJECTED. THE US MADE THE POINT THAT
THE MILITARY EXEMPTION CLAUSE SHOULD EXEMPT MILITARY
AIRCRAFT AS WELL AS SHIPS. IT WAS AGREED TO RECONSIDER

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C O N F I D E N T I A L SECTION 02 OF 02 LONDON 03028

THE QUESTION IN LIGHT OF THE LATER DISCUSSION OF THE
DUMPING ARTICLE WHICH COVERS AIRCRAFT. THE SAFEGUARDS
WERE ACCEPTED.

9. SPECIAL AREAS: THE GROUP AGREED ON THE ITALIAN PRO-
POSAL, AS AMENDED BY THE USSR, IN SPITE OF COMMENTS BY
THE US, NETHERLANDS AND DENMARK THAT SUCH AN ARTICLE
WOULD GIVE COASTAL STATES NO POWERS THEY DO NOT ALREADY
HAVE UNDER THE IMCO CONVENTION. A SUGGESTION TO LIMIT THE
CONCEPT OF SPECIAL AREAS TO AREAS WITHIN THE ECONOMIC
ZONE WAS REJECTED. AT THE URGING OF THE US, IT WAS

DECIDED NOT TO PROHIBIT THE ESTABLISHMENT OF CONSTRUCTION DESIGN, EQUIPMENT AND MANNING STANDARDS IN SPECIAL AREAS, THROUGH THE EXISTING IMCO INTERNATIONAL MECHANISM. DRAFT DOES REQUIRE SPECIAL AREA REGULATIONS TO BE QUOTE CONSISTENT WITH UNQUOTE OTHER IMCO REGULATIONS.

10. STATE RESPONSIBILITY AND LIABILITY: THERE WAS CONSENSUS THAT THE LOS CONFERENCE COULD DO LITTLE MORE THAN ADOPT LANGUAGE STEMMING FROM ITS STOCKHOLM CONFERENCE TO ENCOURAGE DEVELOPMENT OF INTERNATIONAL LAW ON THESE
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ISSUES WHILE REQUIRING STATES TO PROVIDE ACCESS TO THEIR COURTS FOR COMPENSATION AND INJUNCTIVE RELIEF. DENMARK EXPRESSLY SUGGESTED THE DESIRABILITY OF A SUBSEQUENT CONFERENCE TO DEAL WITH LIABILITY FOR TRANSNATIONAL POLLUTION IN GENERAL.

11. DOUBLE STANDARD: THE US, SUPPORTED BY SEVERAL OTHER DELEGATIONS, EXPRESSED THE VIEW THAT DISCUSSION OF THE DOUBLE STANDARD ISSUE IN THE EVENSEN GROUP WAS PROCEEDING SOMEWHAT FAVORABLY AND THAT A PROPOSED ARTICLE OF THE GROUP OF 17 MIGHT PREJUDICE A FAVORABLE OUTCOME. ACCORDINGLY, IT WAS DECIDED THAT THE GROUP WOULD NOT INCLUDE ANYTHING ON THIS POINT.

12. DUMPING: CONSIDERATION OF THE LENGTHY UK PROPOSED ARTICLE ON DUMPING LED TO A CONSENSUS THAT IT WAS TOO COMPLICATED BUT THAT SOME PROVISION ON THE SUBJECT SHOULD BE INCLUDED. THE US SUGGESTED AN ARTICLE PROVIDING SIMPLY THAT A LICENSING STATE BE REQUIRED TO OBTAIN THE CONSENT OF A COASTAL STATE IF IT WISHES TO PERMIT DUMPING IN AN AREA UNDER JURISDICTION OF THAT COASTAL STATE WITH AN ENFORCEMENT RIGHT IN THE COASTAL STATE. IT WAS AGREED THAT A SUBSEQUENT DRAFT REFLECTING THIS VIEW WOULD BE PREPARED.

13. COMMENT: FOR TACTICAL AND SUBSTANTIVE REASONS, MOST MEMBERS FAVORED TABLING OF CONSERVATIVE OPENING POSITION. US ARGUED THAT NO CONCESSIONS ON COASTAL STATE JURISDICTION SHOULD BE MADE IN DRAFT ARTICLES BUT THAT PROVISIONS ON FLAG STATE OBLIGATIONS AND PORT STATE RIGHTS SHOULD NOT BE SO CONSERVATIVE THAT THEY WILL BE IGNORED OR CAUSE HARDENING OF COASTAL STATE POSITIONS. HOWEVER, AGREED DRAFT IS HIGHLY CONSERVATIVE, MORE CONSERVATIVE THAN 1973 US ARTICLES PRESENTLY BEFORE CONFERENCE. GROUP RETAINED MAJOR RESTRICTIONS ON PORT STATE ENFORCEMENT AND ALSO REQUIREMENT THAT PORT AND COASTAL STATE RIGHTS BE CONDITIONED ON BECOMING PARTY TO 1973 IMCO CONVENTION. COASTAL RIGHTS LIMITED TO RADIO REQUEST FOR INFORMATION.

STRONGEST SUPPORT FOR GROUP ARTICLES CAME FROM TRADITIONAL MARITIME STATES SUCH AS UK, GREECE, FRG, AND BELGIUM AND ALSO FROM NETHERLANDS AND DENMARK, BOTH OF WHICH WERE CONFIDENTIAL

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SURPRISINGLY VOCAL IN SUPPORTING RESTRICTIONS ON PORT STATE RIGHTS. COMPLETE COPY DRAFT ARTICLES WILL BE CIRCULATED TO NSC TASK FORCE AGENCIES UPON TEAM'S RETURN. USDEL RECOMMENDS GROUP OF 5 HEADS OF DEL MEET EARLY IN GENEVA ON THESE ISSUES BECAUSE OF WIDELY DIFFERING POINTS OF VIEW. USSR HAS PREPARED NEW SET OF ARTICLES WHICH USSR AND EASTERN EUROPEAN GROUP MAY SUBMIT TO CONFERENCE ALTHOUGH USSR SAID IT WOULD BE WILLING NOT TO DO SO IF GROUP OF 17 TEXT ACCEPTABLE. JAPAN STRONGLY OPPOSES PORT STATE ENFORCEMENT AND PROBABLY WILL NOT CO-SPONSOR. UK PUSHING DRAFT ARTICLES BUT WANTS MAJOR RESTRICTIONS ON PORT STATE ENFORCEMENT. FRANCE WILL NOT CO-SPONSOR BECAUSE OF LACK OF COASTAL STATE ENFORCEMENT ARTICLE IN DRAFT.

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